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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,425	12/12/2003	Jeffrey T. Remillard	81076407 (FLD 0108 PUS)	1424

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EXAMINER	
SEMBER, THOMAS M	

ART UNIT	PAPER NUMBER
2875	

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/707,425	REMILLARD ET AL.	
	Examiner	Art Unit	
	Thomas M. Sember	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 October 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the species of figures 1-3 in the reply filed on 10/24/2005 is acknowledged.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.
Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-2, 8-13 and 18-19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 5, 8 and 15-18 of U.S. Patent No. 6,900,437. Although the conflicting claims are not identical, they are not patentably distinct from each other because the 437' Patent merely uses slightly different claim language to claim the same invention.

1. Claims 3-7, 14-17 and 20 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 8-13, 18-19 of U.S. Patent No. 6,900,437 (Remillard et al) in view of McDermott. Claims 1-2, 8-13, 18-19 of U.S. Patent No. 6,900,437 (Remillard et al) discloses the claimed invention except for the teaching of a plate having a plurality of LEDs. McDermott teaches a plurality of LEDS on a plate for dispersing visible light. It would have been obvious to one skilled in the art at the time the invention was made to substitute a plurality of LEDs as taught by McDermott for the visible light source of U.S. Patent No. 6,900,437 (Remillard al) in order to provide a more efficient, longer lasting alternative light source.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-2, 8-13 and 18-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Remillard et al '437. The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention

disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2 and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Chapman et al. Chapman et al discloses a a near infrared light source 14, an optical element (10 and 12 including collimator 34) disposed a distance from said near infrared source, the optical element having face for receiving light from said an input surface near infrared source and an output surface for emitting said received light in a desired emission pattern; and at least one visible, non-red light source 8 arranged proximate a surface of the optical element such that the output surface of said optical element emits said visible light to mask the emitted near infrared light. Regarding claim 2, the near infrared light source comprises a laser diode emitting light at wavelengths between approximately 800-900nm and said visible, non-red light source comprises a light source emitting light at wavelengths between approximately 400-600nm. Claims 12-13 are similar to claims 1-2 addressed above.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 3-5, 7, 14-15, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman et al in view of McDermott. Chapman et al discloses the claimed invention except for thew teaching of a plate having a plurality of LEDs. McDermott teaches a plurality of LEDS on a plate for dispersing visible light. It would have been obvious to one skilled in the art at the time the invention was made to substitute a plurality of LEDs as taught by McDermott for the visible light source of Chapman et al in order to provide a more efficient, longer lasting alternative light source.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 3-7, 14-17 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Remillard et al in view of McDermott. Remillard et al discloses the

claimed invention except for thew teaching of a plate having a plurality of LEDs. Mc Dermott teaches a plurality of LEDS on a plate for dispersing visible light. It would have been obvious to one skilled in the art at the time the invention was made to substitute a plurality of LEDs as taught by McDermott for the visible light source of Remillard al in order to provide a more efficient, longer lasting alternative light source.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. discloses devices which are similar to applicant's invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas M. Sember whose telephone number is 571-272-2381. The examiner can normally be reached on M-F 8 A.M- 5.30 p.m. first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas M Sember
Primary Examiner
Art Unit 2875